

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JEAN DUFORT BAPTICHON,

Plaintiff,

- against -

MEMORANDUM & ORDER
20-CV-2400 (PKC) (LB)

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

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PAMELA K. CHEN, United States District Judge:

On May 26, 2020, Plaintiff filed the instant *pro se* action, asserting various tort claims under the Federal Tort Claims Act in relation to his student loan and Defendant's withholding of tax refunds that were due to him. (*See generally* Complaint, Dkt. 1.) By letter dated June 1, 2020, the Deputy Clerk of Court informed Plaintiff that his submission was deficient as he failed to pay the filing fee or submit an application for *in forma pauperis* ("IFP") relief. (*See* Dkt. 6.) Plaintiff was provided with an IFP form and instructed that, in order to proceed, he was required to cure the deficiency within 14 days or his case could be dismissed. (*Id.*) In light of the COVID-19 pandemic and Plaintiff's *pro se* status, the Court allowed Plaintiff additional time to respond. When Plaintiff did not cure the deficiency or respond in any way by July 8, 2020, the action was dismissed without prejudice for failure to pay the filing fee or provide a completed IFP application. (*See* Dkt. 7.) The Clerk of Court entered Judgment on July 9, 2020. (Dkt. 8.)

In a letter filed July 28, 2020, Plaintiff seeks reconsideration of the July 8, 2020 Order on the grounds that he did not receive the Deputy Clerk of Court's June 1, 2020 notice of deficiency¹

¹ Although Plaintiff states that he did not receive the notice of deficiency (Dkt. 9 at 1), it was not returned by the United States Postal Service and was assumed to have been delivered.

and that his submission of a different IFP request in support of his application for counsel (*see* Dkt. 2 at 2–4) should be construed as complying with the filing requirement. (Dkt. 9.) However, that IFP request is not an adequate substitute for the Application to Proceed in District Court Without Prepaying Fees or Costs provided to Plaintiff by the Deputy Clerk of Court (Dkt. 6 at 2–3), as the former does not contain the same level of detail regarding the applicant’s finances and ability to pay as the latter.

CONCLUSION

Plaintiff’s motion for reconsideration is granted. The July 7, 2020 Order and the July 8, 2020 Judgment are vacated for the limited purpose of correcting the filing deficiency—that is, submitting a completed Application to Proceed in District Court Without Prepaying Fees or Costs, a copy of which is attached to this Order, or which can be electronically obtained through the Court’s website at <https://img.nyed.uscourts.gov/files/forms/AO.pdf>—within 14 days of this Order. If Plaintiff submits the completed form within 14 days, the Complaint will be reviewed under 28 U.S.C. § 1915. If Plaintiff does not submit a completed IFP application within 14 days of this Order, this action will be dismissed. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore IFP status is denied for the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

/s/ Pamela K. Chen

Pamela K. Chen
United States District Judge

Dated: July 31, 2020
Brooklyn, New York